Cr A 796/98 (2)

XII-189 (Jail) C.J.P.R.-9-94

APPEAL OF PRISONER

No अपिल दर्ज क्रमांक 815/57 Name रामू मुलतानी

Father's name श्री रामदीन मुलतानी हाल्फ दोस्तीपुर (नवागढ़) थाना रामपुर जिला जांजगीर (म.प्र.)

Residence हाल- 802 ए.ई.डी.सी. Age 30 वर्ष

Sentenced to सजा हाईकोर्ट जबलपुर on 10-3-98

Under Section 302/ दफा 307/305 by हिन्दी हाल्फ ए.डी.जे. रामपुर जिला जांजगीर

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement _____

2 Date on which copy received _____

3 Date on which Appeal sent 13-3-98

4 Whether the prisoner wishes to be represented or not नहीं

No अपिल दर्ज क्रमांक 815/57 Name रामू मुलतानी पि० रामदीन मुलतानी

Confined in _____ Jail जिला जबलपुर (मध्य प्रदेश)

No _____ Dated 13-3-1998

Forwarded to the अतिरिक्त सेशन जज रामपुर जबलपुर (मध्य प्रदेश)

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

अधीक्षक
Superintendent
जिला-जेल, जिला जबलपुर म.प्र.
17/3/98

Jail _____

Date of receipt in _____ Office _____

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____

Forwarded to the _____

High Court of Madhya Pradesh
JABALPUR.
23 MAR 1998
Reg. No. 3
Recept Clerk
High Court, Jabalpur

Date of receipt in Appellate court _____

(P. T. O.)

(29)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CRA 796/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 796 of 1998

Appellant : Raju Gupta

Vs.

Respondent : State of Madhya Pradesh

Smt. Kiran Jain, learned counsel for the appellant.

Shri Ravindra Agrawal, learned P.L. for the respondent/State.

ORAL JUDGMENT

(28.02.2006)

Per Dhirendra Mishra, J

By this appeal under section 374 (2) of the Code of Criminal Procedure the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 10th March 1998 passed by learned II Additional Sessions Judge, Bilaspur in Sessions Trial No. 329/97 whereby learned II Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under section 302 of the IPC sentenced him to undergo imprisonment for life and pay fine of Rs.200/-, in default of payment of fine to further undergo S.I. for one month.

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक Cr.A.796/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. Case of the prosecution, in brief, is that deceased Konda @ Vinod, aged about 6 years, was the step son of the appellant. On 02.07.1997 Siya Bai, wife of the appellant gave merg intimation of Ex.P/1 in police station – Ratanpur to the effect that in the morning when she returned after working in the *badi*, her husband/appellant informed her that he slapped the deceased two three times as he had passed urine in the pant. Thereafter, she again went to the *badi* for collecting firewood and when she returned from there at 12.00 noon she found her husband Raju carrying Konda @ Vinod towards Lalpur. Thereupon, she informed Kishan Singh, her brother-in-law who followed the appellant towards Lalpur and both of them returned at about 1.00 p.m. and by that time Konda had died. She expressed her suspicion that her husband Raju had beaten the deceased as a result of which her son died. During merg inquiry inquest over the dead body was performed vide Ex.P/3 in the presence of the witnesses. Thereafter, dead body was sent for postmortem examination to Primary Health Centre, Ratanpur vide Ex.P/6. Dr. N.K.Samdariya (PW-8) conducted the postmortem on the body of the deceased and submitted the report (P-10). Doctor performing autopsy found haematoma over left temporal parietal and occipital region, haematoma over lumber and lower chest region, backside fluid reddish blue colour, lacerated wound over chin and abrasion over tip of shoulder. On dissection the external injuries over head, fissured fracture of left temporal

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक CR.A.796/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

parietal region, fluid subdural clot over right side, fluid present, cerebral hemorrhage was found in subcutaneous, coagulated blood fluid present underneath skin. Other injuries were simple in nature and caused by hard and blunt object. Head injury was grievous in nature. On query whether the injuries over the head of the deceased were grievous and the same were caused as a result of beating or whether the injuries over the head could be as a result of accident due to fall or whether by throwing the deceased they were caused, the doctor opined that the injuries could be caused by smashing the child over the ground forcefully. He further opined that the fracture of the skull could not be caused by falling on the ground and the death was homicidal in nature. Spot map (P-8) was got prepared by the investigating officer. FIR (P-9) was registered on 05.07.1997 on the basis of report given by S.K. Rastogi, Sub-Inspector. After completing investigation charge sheet was filed against the appellant under Section 302 of the IPC in the Court of Chief Judicial Magistrate, Bilaspur who in turn committed the case to the Court of Sessions Judge from where II Additional Sessions Judge received the case on transfer for trial.

3. Learned trial Court framed charge under Section 302 of the IPC. The appellant abjured his guilt. The prosecution in order to establish its case examined eight witnesses. Statement of the accused was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances

[पीछे देखिये

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी.रजिस्ट्रार के अन्तिम आदेश

appearing against him in the prosecution case and pleaded his innocence and false implication in the case as he was having animosity with Kishan and Phool Singh.

4. Homicidal death of deceased is not in dispute.

5. The only question to be decided is whether the prosecution has been able to establish the involvement of the accused/appellant in the above case? There are no eyewitnesses to the incident. Case of the prosecution is based on circumstantial evidence and the circumstances relied upon by the prosecution are as under;

i) That the accused appellant is the father of the deceased and he used to beat the deceased as he used to pass stool and urine in his pant. Earlier also he had beaten the deceased on number of occasions. At the time of incident only the deceased and the appellant were in the house. PW-1 Siya Bai, the mother of the deceased went to collect firewood and when she returned from the *badi* she found the appellant carrying deceased Konda @ Vinod in his hands towards outside the house and head of the deceased was hanging.

ii) That the appellant did not tell as to where he was carrying the deceased. When Kishan Singh (PW-

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक CrA 796/98 सन् 200

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2)-brother-in-law of the accused/appellant was going to the police station to lodge the report, accused/appellant returned carrying Vinod in his both hands and on being asked accused Raju informed him that child was dead. When they said that the matter had to be reported to the police, accused told that he would not go to the police station and call some persons from the village and he will do whatever they say.

iii) That the appellant went to Trilochan (PW-4) and told him that the child was sick and passing loose motion. On examination he found that the condition of the child was very serious and advised him to take the child to Ratanpur Hospital. However, the child died thereafter.

6. To establish these circumstances the prosecution has examined PW-1 Siya Bai, the mother of the deceased and wife of the appellant. She has stated that the appellant is her husband and the deceased was her son from the former husband. However, they were residing together with both the children from her former husband. She has further stated that on the date of incident at 12.00 noon the appellant had sent her to fetch firewood in the nearby *badi* and when she returned from there she found that the appellant was carrying the deceased in both his hands and head of the child was hanging and the accused/appellant did not inform her

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक CrA 796/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that where he was taking the deceased. She found that the blood had splashed in the room. She narrated the incident to her brother-in-law Miltry @ Kishan and went to lodge the report in the police station along with Kishan. She further stated that accused used to beat the deceased as he used to pass urine in his pant. She further stated that when she was going to the police station to lodge the report along with Kishan, the accused returned with deceased. Thereafter they locked the accused in a room and bolted the door from outside and went to lodge the report. She noticed injuries over the head and back of Vinod and stated that in fact accused had assaulted him. Defence has not been able to elicit anything in the cross-examination of this witness. Thus on the basis of the evidence of this witness the prosecution has been able to establish the fact that at the time of incident this witness has left her husband, the appellant and the deceased in her house and when this witness returned to her house she found the appellant carrying the deceased in both his hand towards outside and while this witness was proceeding towards police station along with Kishan to lodge the report the accused returned with the deceased and informed that deceased had died.

PW-2 Kishan Singh has also supported the evidence of PW-1 Siya Bai in material particulars stating that Siya Bai came towards him running and informed that Raju killed the deceased and when he went to the house of Siya Bai he found that the accused was not in his house and at the same time he found that accused was

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक CA 796/98 सन् 200

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	returning from Lalpur side with the child. On enquiry accused stated that whatever had to happen has happened. On further being asked that the child was dead, let us go to the police station to lodge the report the accused stated that he would not go to the police station and call the persons from the village and he would do whatever they say.	
7.	Thus from the conduct of the accused as narrated by PW-1 and PW-2 in their deposition that the appellant took the deceased towards Lalpur and returned from there carrying the child who was dead and his further conduct that the appellant was reluctant to lodge the report in the police station as he wanted to settle the matter with the village people, the involvement of the accused in this case has been established. PW-3 Shankar Rao has stated in his evidence that his grand son Konda used to tell him that accused was beating him. PW-4 Trilochan who is a registered medical practitioner has stated that on 02.07.1997 at about 1.00 p.m. accused came with a child and stated that child was sick and he was having loose motion, whereupon he had examined the child and found that his condition was serious and then he advised the appellant to take the child to Ratanpur Hospital. This witness resides some one kilometer away from the village where the appellant resides. From the statement of this witness also it is evident that the appellant tried to mislead this witness who is doctor by profession regarding the reason of ailment. The above	

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CrA 796/98 सन् 200

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

circumstance leads towards the involvement of the appellant in the present case.

8. Thus from the perusal of the statement of PW-1 we have already held that at the time of incident only the appellant and the deceased were present in the house. Further the conduct of the accused after the incident is also material and the same is admissible under Section 8 of the Evidence Act and the above conduct of the appellant is an incriminating circumstance which leads to the irresistible inference that the appellant after committing the offence took the child Vinod to get him treated to PW-4. The child subsequently succumbed to the injuries.

9. Thus from the evidence of the above witnesses, we are of the considered opinion that the prosecution has been able to establish the circumstances mentioned above which point towards the guilt of the accused to cause death of deceased Konda @ Vinod and as such the involvement of the accused in causing death of the child is established.

10. Learned counsel for the accused/appellant submits that there is no intention to cause death of his own step son and the motive attributed to the appellant to cause the death of deceased that since the six years old child spoilt his clothing by passing urine and stool in his pant, cannot be a strong motive to cause the death of the deceased and even assuming that under the rage if the appellant had smashed the child, aged six years, on the ground,

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक CrA 796/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the same cannot be an offence punishable under Section 302 of the IPC and the offence committed by the accused/appellant does not travel beyond Section 304-I or –II of the IPC. In support of her argument she relied upon the decision of the Supreme Court in the matter of **Bulaki Vs. State of M.P.** reported in **2000 SCC (Cri) 684**.

11. On the other hand, learned counsel for the State supported the impugned judgment of the trial Court.

12. We have heard learned counsel for the respective parties.

13. From the evidence available on record we have already arrived at the conclusion that the appellant was responsible to cause death of the deceased. However, from the evidence on record and considering the conduct of the appellant that after the incident the appellant took the deceased alive to PW-4 Trilochan for treatment, we are of the opinion that the intention of the accused to cause death cannot be attributed to him and the offence committed by the appellant does not travel beyond Section 304-I of the IPC.

14. In the result, we set aside the judgment of the trial Court convicting the appellant under Section 302 of the IPC and sentencing him to undergo imprisonment for life, instead convict him under Section 304-I of the IPC and sentence him to undergo R.I. for eight years. It is stated that the appellant is in jail since 05.07.1997 and thus he has already completed the sentence awarded to him. In view of the

[पीछे देखिये

(38)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CRA 216/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	above, we direct that the appellant be set at liberty forthwith if not required in any other case. Sd/- L.C. BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge

[पीछे देखिये